

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA and
THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiffs,

v.

SPRAGUE RESOURCES LP and
SPRAGUE OPERATING RESOURCES, LLC,

Defendants.

No. 1:20-cv-11026-LTS

DECLARATION OF JAY LEDUC

I, Jay Leduc, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Director of Health, Safety, Environment and Sustainability at Sprague Operating Resources LLC (“Sprague”), headquartered in Portsmouth, New Hampshire. I have been employed at Sprague since September 1, 2014.
2. My responsibilities at Sprague include managing the corporate Health, Safety, Environment (HSE) and Sustainability Department. I am responsible for governance, oversight, and performance for HSE-related matters and management systems. I lead a team of HSE professionals to ensure HSE-related strategies, policies, and objectives are implemented effectively and consistently throughout the company with the goal of ensuring regulatory compliance and continuous improvement.
3. Sprague operates a petroleum storage and distribution facility at 372 Shattuck Way in Newington, New Hampshire (“Newington Facility”). Sprague stores asphalt and No. 6 fuel oil in heated tanks at the Newington Facility.

4. In August of 2018 officials from the town of Newington contacted Sprague's engineering manager regarding potential odors from the Newington Facility. Sprague commenced an internal investigation to determine potential sources of odors from the facility or operations.
5. As a result of its investigation of the August 2018 complaint, Sprague did not find sources of odor at the Newington Facility. Sprague noted, however, that road construction and asphalt paving were being conducted in the immediate vicinity of the Facility.
6. Attached as Exhibit 1 is the project map and construction schedule for the multi-year asphalt paving project for the General Sullivan Bridge and surrounding roads in Dover and Newington, New Hampshire. The project is a 13-year, six-lane road resurfacing and bridge replacement project that was ongoing in 2018 and scheduled to continue through 2022. Typically, when roads are paved a strong asphalt odor is emitted for extended periods of time as trucks drop many loads of hot asphalt onto the road and construction crews flatten and shape the asphalt to form large sections of roadway. Sprague determined that the likely source of odors detected in August 2018 was the road re-paving project.
7. In September of 2019 representatives of Sprague met with members of the Newington Town Council to discuss allegations and concerns about odors in the vicinity of the Newington Facility. Sprague offered to assist the town in tracking down potential odor sources and asked the town officials to share odor complaint notifications with Sprague. In particular, Sprague suggested that the following details be provided regarding any odor complaints: location, date, time, weather conditions, type of smell, duration, and strength.
8. At various times beginning in April of 2019 Sprague received complaints of petroleum or asphalt odors in the vicinity of the Newington Facility. Many of the complaints did not contain the

detailed information Sprague had requested. Sprague logged each odor complaint into its Incident Management System for investigation, tracking, and reporting purposes.

9. On April 22, 2019, Sprague installed a deodorizer system at the Newington Facility that would spray a deodorizing mist into the air, in an effort to mitigate potential odors traveling off-site from the facility. Sprague installed the misters at various locations along the perimeter of its property and at the vents of the asphalt storage tank containing product from an allegedly odorous source. The mister units continued to run throughout the spring and summer of 2019.
10. Sprague continued to receive odor complaints periodically in 2019 and 2020. The Town of Newington's web site identified Sprague as the only potential odor source and encouraged residents to submit odor complaints to the town.
11. Sprague has a protocol for investigating odor complaints at its facilities, which it used in response to complaints concerning the Newington Facility. After a complaint is received, Sprague conducts an odor analysis that includes dispatching operations and health, safety and environment staff to the alleged location of the odor, reviewing on-going operations, collecting weather data, interviewing employees and local residents (if available), and evaluating potential odor sources in the surrounding area at the time of the incident. As part of its investigation of odor complaints Sprague determines whether product (i.e., asphalt or No. 6 oil) was being delivered (a/k/a offloaded) to one of its tanks from a vessel at the time of the odor complaint.
12. In addition, Sprague uses multigas meters to ensure safe work environments at its facilities; these meters record carbon monoxide, oxygen, hydrogen sulfide, and lower explosive levels. As part of its analysis of odor complaints, Sprague checks data from the multigas meters; however, the results are generally non-detect for the parameters tested.

13. Sprague records information from its odor investigations into its Incident Management System.

Attached as Exhibit 2 is a spreadsheet containing information from Sprague's database concerning the investigation of odor complaints about the Newington Facility between April 10, 2019 and July 10, 2020. The spreadsheet provides details on the date, time, complainant, location, description, wind speed and direction, activity taking place at the terminal (e.g., vessel, rail car, or tank transfer), and any Department of Transportation paving activity in the area.

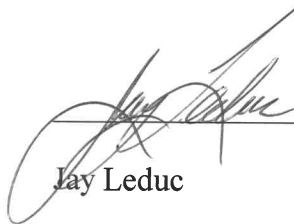
14. As part of their regular duties, when facility operators do facility rounds, odor detection is part of the operational checklist. Any unusual odors are recorded. In addition, if a particular product has unusually high odor when being offloaded to a Sprague tank, Sprague notes that fact in its records and, if necessary, develops a plan to address odors from that tank. The latter occurred during a vessel discharge to the Newington Facility on January 26-27, 2019, with operations personnel noting a high odor on January 28, 2019. Sprague monitored the product over the following months and developed an action plan to address the odor of the remaining product in the tank as warmer weather approached.

15. In April of 2020 the New Hampshire Department of Environmental Services (NHDES) initiated an investigation of Sprague's Newington Facility in response to odor complaints communicated by the Town of Newington. Sprague shared all of its data with the NHDES, including the spreadsheet of data from the Incident Management System. Personnel from the Air Resources Division – Compliance Bureau of the NHDES conducted a site visit to the Newington Facility on August 7, 2020 while a vessel was unloading product into a Sprague tank. The NHDES inspectors took a video with a FLIR camera, which identifies the presence of volatile organic compounds, and took measurements with a photoionization detector instrument. The NHDES

observed little to no odors being emitted off-site during vessel unloading operations and no elevated concentrations of volatile organic compounds.

16. During the summer of 2020 Sprague reactivated an odor control system at the Newington Facility that was previously installed in 2003-2004 but deactivated, to address potential odors from No. 6 oil tanks located near the front of the terminal property and a truck loading rack.
17. Sprague notifies the NHDES of Sprague's vessel delivery schedule and has offered to have personnel from the NHDES conduct additional site visits. Sprague is committed to working cooperatively with the NHDES and the Town of Newington to address any odors that are associated with the Newington Facility. At the present time (in light of the significant asphalt paving project) any asphalt odors in the area cannot be definitively attributed to Sprague.

Signed under the penalties of perjury this 10th day of November 2020.



Jay Leduc

Exhibit 1

Exhibit 2

Complaint Date	Time Range	Complainant	Complaint Location	Odor Description	Wind Direction at Time of Complaint	Wind Speed	Complaint Location Relative to Terminal	Documented DOT Activity (within 24-36 hours)	Wind Correlation (wind direction relative to complaint location)	Vessel/Railcar Offload Occurring	If Yes, Product	Tank-To-Tank Transfer
4/10/2019	3:00PM	Newington Fire Chief	Town Hall, 205 Nimble Hill Rd, Newington, NH 03801	none provided	NE	15	SW	no	yes	no	N/A	no
5/17/2019	5:00PM	Resident (direct contact)	unknown	none provided	S	5	unknown	no	no	no	N/A	no
6/8/2019	9:00PM	Resident (called Town of Newington)	unknown	strong	SE	8	unknown	no	no	no	N/A	no
6/10/2019	10:00AM	Resident (called Town of Newington)	unknown	none provided	SW	7	unknown	no	no	no	N/A	no
6/10/2019	10:00PM	Resident (called Town of Newington)	unknown	none provided	SE	10	unknown	yes	no	no	N/A	no
6/21/2019	5:00PM	Resident (called Town of Newington)	Dover Point Rd Dover, NH 03820	none provided	NW	10	NW	no	no	no	N/A	no
7/10/2019	5:00PM	Resident (called Town of Newington)	Shattuck Way, Intersection with Nimble Hill Rd, Newington	none provided	SE	9	W	no	yes	no	N/A	no
7/24/2019	3:00PM	Resident (called Town of Newington)	Dover Point Rd Dover, NH 03820	none provided	E	8	NW	yes	no	yes	AvGas (Avery Lane-Railcar)	no
7/25/2019	2:00PM	Resident (called Town of Newington)	Dover Point Rd Dover, NH 03820	none provided	SE	9	NW	yes	yes	yes	B-100 (River Road-Vessel)	no
7/25/2019	3:00PM	Resident (called Town of Newington)	Dover Point Rd Dover, NH 03820	none provided	SE	10	NW	yes	yes	yes	B-100 (River Road-Vessel)	no
9/23/2019	unknown	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	SW	10	E	no	yes	no	N/A	no
9/24/2019	unknown	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	W	9	E	no	yes	no	N/A	no
9/25/2019	unknown	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	W	5	E	no	yes	no	N/A	no
9/26/2019	unknown	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	SW	5	E	yes	yes	yes	Asphalt (River Road-Vessel)	no
9/27/2019	unknown	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	SSE	7	E	no	no	no	N/A	no
9/28/2019	6:00PM	Resident (called Terminal on 9/28/19)	43 Mast Cove Rd, Eliot, ME 03903	strong petroleum smell coming from the terminal that started on Monday, and at times is unbearable	SSW	7	E	no	yes	no	N/A	no
10/12/2019	8:00PM	Resident (called Town of Newington)	near mall	none provided	none	0	SE	no	no	no	N/A	no
10/22/2019	11:00AM	Resident (called Town of Newington)	under overpass near River Road	none provided	E	12	W	yes	yes	yes	Y.G. (River Road-Vessel)	no
10/24/2019	7:00AM	Resident (called Town of Newington)	Going over the Route 16 bridge from Newington to Dover	none provided	none	0	W	yes	no	no	N/A	no
10/30/2019	3:00PM	Resident (called Town of Newington)	Odor is across the bay in Dover	none provided	SE	8	NW	no	yes	no	N/A	no
11/8/2019	5:00PM	Resident (called Town of Newington)	Nimble Hill Road by exit 4	strong	NW	14	W	no	no	no	N/A	no
11/9/2019	7:00PM	Resident (called Town of Newington)	Nimble Hill Road by exit 4	strong	S	7	W	no	no	yes	AvGas (Avery Lane-Railcar)	no
11/11/2019	6:00PM	Resident (called Town of Newington)	Going over the Route 16 bridge from Dover to Newington	very strong	NE	8	W	yes	no	no	N/A	no
12/14/2019	7:00PM	Sprague Employee	Going over the Route 16 bridge from Newington to Dover	strong	N	10	W	yes	no	no	N/A	no
3/2/2020	3:00PM	Resident (called Town of Newington)	the intersection of Nimble Hill Road and Shattuck Way	Strong odor. I could smell asphalt as I got off the highway on Rt 16 (Tim Winters)	SE	12	W	no	yes	yes	Asphalt on 3/1 (River Road-Vessel)	no
3/3/2020	6:00AM	Resident (called Town of Newington)	the corner of Coleman Drive and Nimble Hill Road	I could smell asphalt as I got off the highway on Rt 16 (Tim Winters)	none	0	W	no	no	yes	Y.G. (River Road-Vessel)	no
4/2/2020	unknown	Town of Newington Staff Member	Town Hall, 205 Nimble Hill Rd, Newington, NH 03801	It is almost similar to a burning oil smell.	NW	14	SW	no	no	no	N/A	no
4/4/2020	unknown	Town of Newington Staff Member	Town Hall, 205 Nimble Hill Rd, Newington, NH 03801	It is almost similar to a burning oil smell.	NE	8	SW	no	yes	no	N/A	no
4/6/2020	unknown	Town of Newington Staff Member	Town Hall, 205 Nimble Hill Rd, Newington, NH 03801	It is almost similar to a burning oil smell.	SE	9	SW	no	no	no	N/A	no

MyOSH

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2672

none

none

none

none

none

none

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none

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4/25/2020	5:00PM	Sprague Employee	between exit 3 (Woodbury) and on the bridge, on both legs of my drive	distinct odor that smelled like asphalt or gas-like	SE	12	SE	no	no	no	N/A	no
4/29/2020	3:00PM	Town of Newington Staff Member	Driving by Terminal	smelled fumes/odors	ESE	7	N/A-driving by terminal entrance	no	no	no	N/A	no
5/18/2020	8:00AM	Resident (called Town of Newington)	Drove by Sprague	strong smell	N	6	N/A-driving by terminal entrance	no	no	no	N/A	no
5/26/2020	8:00AM	Resident (called Town of Newington)	Nimble Hill Road by exit 4	strong smell	none	0	W	yes	no	no	N/A	no
7/9/2020	11:00PM	Resident (called Town of Newington)	28 Fox Point Road Newington, NH	noxious fumes	none	0	SW	yes	no	yes	Asphalt, evening of 7/9 - morning of 7/10 (River Road-Vessel)	no
7/9/2020	9:00PM	Sprague Employee	Drove by Sprague	very strong smell of asphalt	none	0	N/A-driving by terminal	yes	no	yes	Asphalt, evening of 7/9 - morning of 7/10 (River Road-Vessel)	no
7/10/2020	6:00AM	Resident (called Town of Newington)	28 Fox Point Road Newington, NH	noxious fumes	none	0	SW	yes	no	yes	Asphalt, evening of 7/9 - morning of 7/10 (River Road-Vessel)	no
7/10/2020	6:00AM	Resident (called Town of Newington)	Fox Point Road Newington, NH ("Just down the street" from Wendy Sweeney complaint)	noxious fumes	none	0	SW	yes	no	yes	Asphalt, evening of 7/9 - morning of 7/10 (River Road-Vessel)	no

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none-email from Lance

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